IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.345 OF 2007

Punikem Textile Private Limited ....Petitioner

V/s.

Ms.Samidha Sanjay Munj ...Respondent

Mr.V.P. Vaidya for Petitioner.

Mr.C.U. Singh with Sanjay Udeshi i/b. M/s.Sanjay Udeshi & Co. for Respondent No.1.

CORAM : V.M. KANADE, J.
DATED : 4nd APRIL, 2007.

ORAL JUDGMENT:-

1. Heard learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondent.

2. The Petitioner is challenging the award passed by the 2nd Labour Court dated 07/08/2006 whereby 2nd Labour Court was pleased to pass an award in favour of Respondent, directing reinstatement with back wages.

3. Brief facts which are relevant for the purpose of deciding this petition are as under:-

. The Petitioner is a company registered under the Companies Act, 1956. The Respondent was appointed as a Clerk and had joined services of the Petitioner Company in the year 1992 and before she was terminated, she was working as Assistant Accountant. Similarly in the month of June, 2002 an Officer from Chimane Sanmitra Co-operative Society visited the establishment of the Petitioner Company and made inquiry about one Shri Kishor Shantaram Patade alleged to be employed with the Petitioner Company as Machine Operator. Accordingly, inquiry was made by the Labour Officer and it transpired that no such workman employee was employed with the Petitioner Company. Accordingly, the Officer from the said Co-operative Society was informed about this fact. However, again in the month of July, 2002 one Shri G.B. Bangar, Special Recovery Officer of the said Society visited the establishment of the Petitioner company and met Shri. Mayur Parekh and presented order of attachment of salary of said

Shri.Patade. Said Officer informed that certificate had been issued by the Petitioner Company mentioning therein that said Shri.Patade was employed as Machine Operator and had stood as guarantor for the loan which was obtained by one Subhas Gopal Patkar who was brother of the Respondent. Said officer informed that since there was default in repayment of loan, order of attachment had been issued and for that purpose the Officer had visited establishment of the Petitioner Company for serving the attachment order. According to the Petitioner Company, inquiry was made and they found that the said certificate was forged. It is case of the Petitioner Company that since certificate was issued in favour of Shri.Patade to secure loan for the brother of the Respondent, the Petitioner decided to make inquiry with the Respondent about said transaction. Thereafter they alleged that the Respondent threatened the Director of the Petitioner Company. Letter of termination was issued and services of the Respondent were terminated for loss of confidence by letter dated 20th August, 2002.

4. Respondent raised industrial dispute, challenging the termination of her service which was referred for adjudication before

the Trial Court, being Reference (IDA) No.134 of 2004. After statement of claim was filed, the Petitioner Company filed written statement opposing claim. Parties filed documentary evidence on record. The Respondent filed affidavit in lieu of examination in chief and award was passed by the Trial Court directing the Petitioner Company to reinstate the Respondent without back wages but with continuity of service.

5. Shri.Vaidya learned counsel for the Petitioner submitted that the Trial Court had committed gross error by holding that the Petitioner had not proved allegations which were made against the Respondent. He submitted that the Trial Court had not taken into consideration documentary evidence on record and more particularly forged certificate and order of attachment issued by the competent court. He submitted that it was not disputed by the Respondent that her brother had obtained loan on the basis of certificate on the letter head of the Petitioner Company which was found to be forged and this fact had been admitted by the Respondent. He submitted that in view of facts and circumstances, the Petitioner was justified in losing confidence in the Respondent.

The Respondent did not inquire with her brother about loan transaction made by her brother. He further submitted that the Trial Court had erred in relying on the oral evidence of the Respondent which was inconsistent with the material on record. Learned counsel for the Petitioner submitted that the Trial Court had exceeded its jurisdiction by directing reinstatement of the Respondent particularly when the Petitioner had lost confidence in the Respondent and in such case, at the most the Trial Court could have granted compensation.

6. I have perused the impugned award passed by the Labour Court. Perusal of the award of termination merely discloses entire circumstances in which order of termination came to be passed, which has been mentioned in letter of termination dated 20th August, 2002. Respondent was a permanent employee and was working since 1992. Though the alleged forged certificate was issued on the letterhead of the Petitioner company, there is no material on record to indicate that the Respondent had forged the letter or had caused it to be forged for the benefit of her brother. In the absence of any material, Management could not have came to

the conclusion that the Respondent was personally responsible for the existence of the said forged letter. However, witness who was examined on behalf of the Petitioner company, namely one of its directors whose signature was allegedly forged, does not make a statement on oath that the signature on the said certificate is forged or that he did not sign said certificate. In the absence of categorical statement by the Director that signature which is found on the said certificate, does not belong to him, in my view, adverse inference would be drawn in respect of his testimony that the Respondent had forged the certificate. The Director could have made a categorical statement that he had not signed the certificate which in this case, he has not said so on oath. It is not sufficient for the Director to make statement that letter is fabricated. It was duty of the Director to state that whether signature, which was found on the said certificate, was made by him or not. Further the Petitioner Company after coming to know about the existence of the alleged forged document did not choose to file any complaint with the police station. On the face of this fact, it was duty of the Management to have held inquiry against the Respondent. The Labour Court has

considered the entire evidence and accordingly, has given the findings in favour of the Respondent. I do not see any reason to interfere with the order of award by the Labour Court while exercising writ jurisdiction of this court. In the result, writ petition is dismissed in limine.

V.M. KANADE, J.